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SUMMARY RECORD OF THE PUBLIC PART* OF THE 184th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 25 April 1994, at 3.30 p.m.

Chairman: Mr. DIPANDA MOUELLE

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Initial report of Israel (continued)

* The summary record of the closed part of the meeting appears as document CAT/C/SR.184/Add.1.

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The meeting was called to order at 3.35 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of Israel (continued) (CAT/C/16/Add.4)

1. At the invitation of the Chairman, Mrs. Beinisch, Mr. Lootsteen and Mr. Walden (Israel) took seats at the Committee table.

2. - Mrs. BEINISCH (Israel) replied to questions raised by the Committee at the previous meeting. Starting with the question why Israel had not incorporated the provisions of the Convention into its domestic law, she said that the definition of torture under Israeli criminal law was actually much wider than that contained in article 1 of the Convention, covering ill-treatment as well as acts of torture. The "Basic Law: Human Dignity and Freedom", enacted in 1992, which could be viewed as equivalent to a constitution, contained a number of sections that provided unequivocal protection for the individual against any violation of his or her rights through imprisonment, arrest or extradition by members of the Israel Defence Forces (IDF), the police, the prison authorities or other security organizations of the State. A long list of offences, including assault, battery and negligence causing grievous bodily harm, were also punishable under the Penal Code in suspected cases of abuse, torture or ill-treatment of detainees. Indeed, the list was so long and restrictive that it covered part of article 16 of the Convention in addition to article 1.

3. With regard to the Committee's concern about the secret guidelines for interrogation established by the Landau Commission, she was convinced that if she had the authority to reveal their content, the Committee would be completely reassured. Justice Landau, during his years as a Supreme Court judge, had been a well-known opponent of the use of any form of torture or ill-treatment against detainees. He was perhaps being too honest in the Landau Commission report when he described the means he allowed as "moderate physical pressure" because most of those methods were used very widely without being viewed in that light. Quoting from the report, she showed how in the fight against terrorism he had rejected the possibility of invoking the interests of State security to place the security services above the law and had opted instead for the truthful road of the rule of law, in spite of its attendant problems and dilemmas.

4. In reply to Mr. Burns, who had spoken of the possibility of secrecy becoming a form of psychological torture for detainees who did not know what to expect of their interrogators, she said that the interrogation methods allowed by the Landau Commission could not be used by the police in ordinary criminal investigations but only in the case of terrorist activity. Quoting from paragraph 37 of Israel's initial report, she said that when it came to striking a balance between the vital needs of State security and infringement of the rights of detainees, maintenance of the secrecy of the guidelines was perceived as the lesser evil where human life was at risk. The members of terrorist organizations were instructed in ways of withstanding questioning, so that if interrogators were to save lives by obtaining vital information

they had to keep a step ahead of offenders. Quoting from paragraph 36 of the initial report, she pointed out that strict measures had been introduced to ensure that disproportionate pressure was not used in such cases.

5. Mr. Burns had described the defence of necessity as "the tyrant's plea". Personally, she knew of no criminal law system that did not recognize the defence of necessity. The question was how much scope to allow for its use. Nobody would deny its appropriateness in the case of a ticking bomb that had to be defused but the defence of necessity could obviously not be tolerated as a matter of routine. The Landau Commission provided for a case-by-case review to determine whether moderate physical pressure could be applied in the event of serious danger of terrorist acts.

6. The defence of acting under superior orders was outlawed as a justification for torture not only by article 2 of the Convention but also by Israeli domestic law. The defence existed only where the superior orders were lawful.

7. The petition submitted to the Supreme Court by Mr. Salkhat in 1991 was no longer pending. The court hearing had been adjourned at the end of that year with the petitioner's consent to allow time for a review of the Landau guidelines by a special ministerial committee with a view to making them more favourable to detainees. New guidelines had been approved and introduced in April 1993. A new petition to have the Landau Commission guidelines considered by a team of five Supreme Court judges was currently pending. She had no information as to whether the case would be reopened or not.

8. Her delegation had been asked who determined whether a confession obtained under the guidelines was free and voluntary. The burden of proof was on the prosecution and the admissibility of the confession must be proved beyond reasonable doubt. Even then it could be ruled out as evidence by a court of law. The main purpose of obtaining confessions in most cases was not prosecution but use of the information to protect people's lives. She quoted a passage from the Landau Commission report which stated that confessions obtained by means of physical abuse or in a way that aroused feelings of moral repugnance would ipso facto be disqualified.

9. The Committee had referred to reports by Amnesty International, Al-Haq and other non-governmental organizations which, she agreed, were doing important work. However, many of the practices described in those reports were illegal in Israel and if the authorities had information to the effect that such prohibited methods were being used, they would initiate proceedings against the perpetrators. The practices of hooding detainees with wet or dirty sacks, depriving them of food or subjecting them to extremes of cold and heat were all prohibited. With regard to reports of the subjection of detainees to electric shocks, when such allegations had been published in the Israeli newspaper Hadashot she had ordered a police investigation. When that had produced no results, her department together with the Ministry of Justice had made further inquiries with the assistance of a civil rights association and even then no witnesses had come forward and no evidence of such practices had come to light.

10. In Israel the judiciary was independent. Judges could not be removed because of their judgements or opinions, and the Supreme Court judges had great prestige. Pursuant to the Landau Commission's report, cases were reviewed by ministers, who did not act politically but professionally. The sub-committee concerned was headed by the Minister of Justice and its meetings were attended by the Attorney-General and the State Attorney, who saw to it that only legal practices were applied. Changes had been made in favour of detainees. At present security and police personnel were being investigated further to a decision taken by that sub-committee. The Attorney-General's Office formed part of the Government, and some people considered that independent investigations would be preferable. However, in Israel the Attorney-General's Office and public prosecutors worked independently and received no instructions from any governmental authority.

11. Mention had been made of about 20 cases that had occurred since 1989. Approximately two years after the Landau Commission had submitted its report, the State Attorney's Office had presented its findings on events in Gaza to the courts. As a result, two security service investigators had been sentenced to six months' imprisonment. In another case the accused had been acquitted. About 11 investigators had been dismissed from the security services.

12. It was, of course, very difficult to prove such cases in criminal law. People had died in prison as a result of disease, and no evidence could be produced to prove that the cause of death had been maltreatment. However, disciplinary proceedings had been initiated against officials, some of whom had been dismissed. At present two disciplinary cases were pending. In one of them an official had been dismissed, even though he had been acquitted by a court of law. Despite the difficulties in obtaining proof, the authorities had made it clear to security service personnel, who thought that they were doing very important work in protecting Israeli citizens and inhabitants of the Territories and for whom it was a great disgrace to be dismissed, that they must abide by the guidelines.

13. Her department had investigated about 1,900 cases of alleged violence by the police, which were given special priority. Disciplinary proceedings had been initiated against 300 policemen, and some 50 or 60 had been indicted. A great change of attitude had occurred with regard to such cases. In one of them, 10 policemen involved in the investigation of murder and terrorism cases, including the officer who headed the division, had been indicted in a district court. The sections of the Penal Law which had been invoked included those concerned with battery, blackmail with the use of force, fabrication of evidence, and perjury. The certificates showing that the detainees had been maltreated had been supplied by police doctors. The case had taken years to prepare, and her department was now awaiting the judgement in it. About 60 such cases occurred every year. Her department also investigated all complaints against the IDF. Such investigations were very complicated because the population was not very cooperative, but every effort was made to ascertain the truth and to bring offenders to trial.

14. The primary responsibility of doctors was purely professional. Efforts had been made to trace the "medical fitness form" that had been published in a newspaper. Nobody in the IDF or security services agreed that it was legal.

Every detainee, when entering a prison, should be checked by a doctor. Her Government regretted that prisons were so overcrowded. All vital information regarding a detainee's physical condition should be supplied to the investigators, not so that he could be tortured but because he might need better conditions. Every detainee was entitled to medical care whenever he needed it, although in some cases paramedical staff did not arrive immediately. When they failed to provide assistance, they were disciplined. Moreover, it should be borne in mind that many detainees claimed to be ill in order to avoid an investigation. The Israeli authorities did not want such cases to be decided by the investigators themselves.

15. Regrettably, the initial report gave no information on the human rights training of law enforcement officers and doctors. Much more attention was now being given to that point, and special programmes were in place for police and security-services staff. Doctors also received training regarding their duties.

16. So many problems were involved in giving detainees access, even during the investigation, to lawyers and doctors through lists prepared by the bar association or medical authorities that she was not sure that such lists would be advisable. However, the matter was under discussion. In certain very serious cases detainees did not have access to lawyers for a few days. In some circumstances persons held in prison could apply for the services of a specific doctor, but for many reasons that was not practical in the case of persons under interrogation. In any event, doctors attending to detainees performed only their professional duties. In the Territories many of them were civilian doctors who were not members of the administration, although prison and police doctors also existed.

17. Israel did not extradite persons to States where they might be subjected to torture or maltreatment. There were two stages in the extradition process. If the Supreme Court declared that a person could not be extradited, the minister had no discretion and no extradition could take place. If the Supreme Court declared that a person could be extradited, the minister could use his discretion to decide not to extradite him for valid reasons. Any such decision would then be reviewed by the Supreme Court.

18. She could not recall any case in which the problem of universal jurisdiction in matters of torture, dealt with in article 7 of the Convention, had arisen in Israel, although special laws applied in the case of Nazi war criminals.

19. IDF members, security-service staff and police personnel were all considered to be public servants.

20. On the question of compensation under article 14, there had been a misunderstanding regarding the maximum amount of 37,500 new shekels (US$ 12,500) referred to in paragraph 46 of the initial report. That figure was provided for in section 77 of the Penal Law, and was the maximum amount of compensation payable by the person convicted following a decision by the criminal court to award compensation. However, under the Israeli law of Tort, any person was also entitled to bring a Tort action for unlimited damages

against the Government or against government officials. Provision thus existed for compensation under both criminal and civil jurisdictions.

21. It was true that no vicarious liability existed in the event of an assault, and that the Government thus had no formal responsibility in assault cases. The justification for that state of affairs was a matter of controversy. Hundreds of actions for compensation were currently before the courts, and in many of those cases there was not a shred of evidence that Israeli forces had been implicated. However, in practice, under government guidelines, the State often compensated the victim if evidence existed that the damage had been inflicted by a government agent in the course of duty, even though the victim had the formal right to sue only the person inflicting the damage.

22. Mr. Ben Ammar had asked whether the Convention was genuinely implemented in the Territories. In the light of the details her delegation had already provided to the Committee, the question must be regarded as a purely formal one. The important point was that, by virtue of the Convention, or in compliance with the humanitarian provisions of the Geneva Conventions or those of domestic law, human rights were respected by Israel. In her delegation's view, the dispute regarding the international legal position was thus a secondary issue, although there were legal arguments in favour of not implementing the Convention in the Territories.

23. A question had been asked about access to those held incommunicado. A problem of definition arose: no one was held without access to his or her family, to lawyers and to a court. Solitary confinement was very rarely applied, the only case being that of Mr. Mordecai Vanunu, who was held in very special conditions. It had been proposed that he should be confined with another detainee, but he had refused that offer. He had been allocated a larger cell than was customary, and was able to communicate with the outside world through two-way radio. He had access to television, books and newspapers, could have private meetings with his lawyer, and could receive fortnightly visits from his family and visits by a member of the clergy. He was also entitled to apply to the courts for a periodic review of the conditions in which he was held.

24. Mr. BURNS reminded the representative of Israel that she had undertaken to specify what other democratic countries engaged in "moderate physical pressure".

25. Mrs. BEINISCH (Israel) said that there was obviously a problem in determining what constituted moderate physical pressure. She had cited the report of the Landau Commission, a copy of which she would endeavour to transmit to the Committee. Before making his recommendations, Justice Landau had referred to certain Conventions and to the United Kingdom report on measures to combat terrorism in Northern Ireland, and had concluded that the practices in question were accepted in other systems too. However, it was not possible for her to make a specific comparison with those systems, since she did not know what was permitted and what was prohibited under them. Israel did not base itself solely on one judgement of the European Court of Human Rights. A perusal of the relevant chapter of the report of the Landau Commission would clarify the issue.

26. Mr. SORENSEN observed that in none of the 23 countries subject to review by the European Committee for the Prevention of Torture were the practices in question allowed. Full details regarding the rules governing access to a lawyer would be welcome in due course. The International Committee of the Red Cross was currently permitted access to detainees after 1[illegible] days; that lengthy period should be substantially reduced.

27. Mrs. BEINISCH (Israel) said that detainees must be allowed access to a lawyer, both in Israel and in the Territories, unless authorization to the contrary was granted by the officer in charge of the investigation. The relevant provisions of the Penal Law in that regard were referred to in her country's initial report. Regarding the activities of the IDF in the Territories, immediately upon his detention the prisoner had the right to notify members of his family of his arrest. He also had the right to request a meeting with a lawyer. Only in very rare cases where there was a high degree of certainty that a meeting with a lawyer would disrupt the investigation or threaten the security of the areas was such a meeting delayed. Only a limited number of senior-ranking security officials were authorized to delay that right, and they could do so only for a limited period of time. In all such cases the prisoner's lawyer was notified of the delay and was entitled to appeal to the High Court of Justice. Whether in Israel or in the Territories, the Supreme Court could be requested to review the decision to refuse access to a lawyer.

28. In spite of the difficulties posed by the intifada, over the last few years procedures for notification of families had been improved, and a specialized committee had been established for that purpose. Every prison receiving a new inmate must now record his or her name and address on a postcard, which must be mailed to the family on the date of entry into prison. An updated list of detainees was displayed in an easily accessible public location every day in every district of the civil administration. Once they knew where the detainee was held, members of the family were thus also able to ask for a lawyer to be appointed. Each detainee's whereabouts were recorded in a computerized database.

29. It bore noting that the recommendations of the Landau Commission predated the intifada, since the outbreak of which only the most serious cases, such as those involving murder or terrorism, were investigated in accordance with the recommendations of the Landau Commission. All other persons accused, including those under the age of 18 (not 16, as stated in Amnesty International's report), were brought before a judge after no more than eight days. Between 1967 and 1992, the statutory period had been 18 days.

30. Mr. BEN AMMAR said that the answers given by the Israeli delegation had only confirmed his impression that a wide discrepancy existed between the claims made by the State party and information received by the Committee from non-governmental organizations. Indeed, had it not been for the State party's reservation on article 20 of the Convention, the Committee would probably have been seized of a complaint by Amnesty International, an organization which had proved its credibility over a number of years. The Committee would then have been able to initiate an inquiry to ascertain where the truth lay in the conflicting claims of the State party and the non-governmental organizations.

The Committee had still not had an answer to the question whether, as Amnesty International had claimed, eight people had died as a result of torture. If that had happened, what action had been taken and what sanctions imposed on those responsible?

31. Mrs. BEINISCH (Israel), referring to her previous statement, said that investigations had found no proof that any of the eight individuals in question had died as a result of the interrogation techniques used. The death of one person from a heart attack while in custody had probably been attributable to a pre-existing heart condition which the victim had failed to disclose. In another case, a detainee had suffered injuries when arrested and a coroner was still investigating the possibility that he had been given inadequate medical care. The Committee had already been given details of the other cases, one of which had led to an indictment because of the possibility that the victim's death had resulted from the interrogation techniques used. According to an inquiry, the other deaths had been due to natural causes. She emphasized that many of the prisoners detained had been in poor health when arrested and might not have been imprisoned if the authorities had known of their medical history.

32. The CHAIRMAN said that he had not fully understood the Israeli delegation's answer to the question concerning habeas corpus. Did that notion exist under Israeli law and, if so, was it applied in all cases of arrest? Another question concerned the definition of torture under Israeli law. According to the delegation, Israeli legislation prohibited a wider range of acts than those which might be regarded as torture in the strict sense of the term, but it was not absolutely clear what that meant. In particular, did it include provisions covering acts likely to cause mental suffering?

33. He noted that, with regard to acts of torture, Israeli legislation covered only war crimes and appeared to contain no provisions for "universal legislation" which would allow the Israeli authorities to prosecute or extradite anyone accused of committing acts of torture, irrespective of where or against whom they had been perpetrated. Was that not a violation of the terms of the Convention?

34. Lastly, were the Palestinians currently in custody detained solely by administrative order or were the detentions subject to judicial review? And on what basis could individuals be kept in detention?

35. Mrs. BEINISCH (Israel) confirmed that the notion of habeas corpus existed under Israeli law; anyone who had been arrested could apply to a court for a writ of habeas corpus. The authorities then had to show that they had lawful grounds for the arrest. The same principle applied in cases where suspects had been deprived of access to legal counsel.

36. Referring again to her previous statement, she said that a number of provisions under Israeli law prohibited torture, and the Basic Law guaranteed protection of an individual's life, body and dignity. All other laws were interpreted in accordance with that principle. The Criminal Code expressly prohibited any physical assault against prisoners. As to the question concerning mental suffering, she referred the Committee to her previous

statement concerning extortion. On the question of responsibility for the health and welfare of persons in custody, appropriate statutory provisions existed.

37. With regard to the question of universal jurisdiction, it was true that Israeli legislation contained no special provision for prosecuting persons, other than war criminals, accused of torture, but no problem of that kind had ever arisen.

38. In connection with the question concerning administrative detention, she referred again to her previous statement: in Israel, a person could be held for up to 48 hours before being brought before a judge, but consideration was being given to reducing that period to 24 hours. In the Territories, minors could be held for a maximum of eight days before being brought before a court, while adults could be detained for up to 18 days, depending on the nature of the offence. Provisions existed for administrative detention, under which individuals could be detained for up to six months. Those provisions had been applied to both Jewish and Arab terrorists. Persons held under the provisions were entitled to a judicial review of the detention if they requested it. The issue of administrative detention did not, in her view, have anything to do with the methods of interrogation used or with the particular provisions of the Convention against Torture.

39. Mrs. ILIOPOULOS-STRANGAS suggested that the mere fact of being detained for six months might be regarded as inhuman and degrading treatment and therefore as falling under the terms of the Convention.

40. Mrs. BEINISCH (Israel) emphasized that persons so detained were entitled to a judicial review of the grounds invoked for their detention and to better living conditions than other detainees.

41. The CHAIRMAN thanked the delegation of Israel for the answers it had given to the Committee's many difficult questions and for giving the members of the Committee an opportunity to express their views.

42. The public meeting was suspended at 5.25 p.m. and resumed at 5.40 p.m.

43. Mr. BURNS (Country Rapporteur), at the invitation of the Chairman, read out the following text of the conclusions and recommendations on the initial report of Israel which the Committee had just approved in closed session:

"1. Introduction

Israel ratified the Convention against Torture on 3 October 1991 and reserved on articles 20 and 30. It also did not declare in favour of article 22.

This initial report was filed in a timely fashion and was well supported by the oral presentation of the delegation, which was both focused and informative.

2. Positive findings

1. The Committee against Torture notes the way in which public debate is allowed in Israel on such sensitive matters as ill-treatment of detainees, both in Israel and in the Occupied Territories.

2. The Committee is pleased to acknowledge the way in which the Israeli Medical Association reacted to prevent its members from participating in ill-treatment of detainees by filling in the 'medical fitness forms'.

3. The Committee against Torture is pleased to note that the GSS and police are no longer responsible for reviewing complaints of ill-treatment of detainees by their own members, and that such function is now the responsibility of a special unit of the Ministry of Justice. The Committee is also pleased to note that Israel has prosecuted interrogators who have breached domestic standards of conduct and disciplined others.

3. Areas of concern

1. There is real concern that no legal steps have been taken to domestically implement the Convention against Torture. Thus the Convention does not form part of the domestic law of Israel and its provisions cannot be invoked in Israeli courts.

2. The Committee against Torture regrets the clear failure to implement the definition of torture as contained in article 1 of the Convention against Torture.

3. It is a matter of deep concern that Israeli laws pertaining to the defences of 'superior orders' and 'necessity' are in clear breach of that country's obligations under article 2 of the Convention against Torture.

4. The Landau Commission report, permitting as it does 'moderate physical pressure' as a lawful mode of interrogation, is completely unacceptable to this Committee:

(a) As for the most part creating conditions leading to the risk of torture or cruel, inhuman or degrading treatment or punishment;

(b) By retaining in secret the crucial standards of interrogation to be applied in any case, such secrecy being a further condition leading inevitably to some cases of ill-treatment contrary to the Convention against Torture.

5. The Committee against Torture is greatly concerned at the large number of heavily documented cases of ill-treatment in custody that appear to amount to breaches of the Convention against Torture, including several cases resulting in death that have been drawn to the attention of the Committee and the world by such reputable non-governmental organizations as Amnesty International, Al-Haq (the local branch of the International Commission of Jurists) and others.

4. Recommendations

1. That all the provisions of the Convention against Torture be incorporated by statute into the domestic law of Israel.

2. That interrogation procedures be published in full so that they are both transparent and seen to be consistent with the standards of the Convention against Torture.

3. That a vigorous programme of education and re-education of GSS, IDF and police and medical personnel be undertaken to acquaint them with their obligations under the Convention against Torture.

4. That an immediate end be put to current interrogation practices that are in breach of Israel's obligations under the Convention against Torture.

5. That all victims of such practices should be granted access to appropriate rehabilitation and compensation measures.

Finally, we wish to express our wish to cooperate with Israel and we are sure that our recommendations will be properly taken into consideration."

44. Mrs. BEINISCH (Israel), responding to the Committee's conclusions and recommendations, said she had hoped to convince the Committee that real efforts had been made in Israel in recent years to observe the provisions prohibiting torture and was disappointed at having failed to do so. She noted that some of the recommendations, in particular regarding educational programmes, had already been implemented. However, she assured the Committee that the competent authorities in Israel would give careful consideration to all the Committee's findings.

45. The CHAIRMAN thanked the Israeli delegation for providing an opportunity for constructive dialogue and cooperation.

The meeting rose at 5.50 p.m.